

Minutes of the Regular Meeting of the Ankeny City Council

Monday, August 2, 2010 – 5:30 P.M.

Ankeny City Hall – City Council Chambers

410 W. First Street, Ankeny, Iowa

Steven D. Van Oort, Mayor

Dave Kissinger, Mayor Pro tem

Council Members: Craig Block, Wade Steenhoek, Tom Strait, Gary L. Welch

Mayor Van Oort called the meeting to order at 5:30 p.m. All council members were present. City Manager, Carl Metzger, and City Attorney, Amy Beattie, were present.

Mayor Van Oort led the Pledge of Allegiance.

CEREMONY: none

A. PUBLIC FORUM

Citizen Open Forum:

Wendy Ferraro, 601 NW Kimberly Circle, addressed the city council regarding the Band Shell Sound Measurement Study, conducted by Audio Engineering Group, and the proposed Noise Ordinance. She stated she and her husband are only concerned about amplified sound events, not children playing, softball tournaments or the tennis courts at Hawkeye Park. She referred to a Supreme Court decision regarding a band shell in Central Park in New York, which upheld that passive participants of activities in the park have the right to their activity as much as people performing concerts and adjacent homeowners have the right to the quiet enjoyment of their property, so the city has the right to control the volume so as not to interfere with the activities of the other participants in the park and nearby residents. She also stated the Fifth Amendment prohibits government bodies from taking actions that prohibit a property owner of the use and enjoyment of that property. She questioned what scale will be used to enforce the noise ordinance, as decibels are measured on three different scales – the A-scale, the C-scale and the Flat-scale. She also questioned how the decibel level will be enforced, as the permitted level at the park's north property line is 70 db, but 55 db just across that property line in the residential neighborhood, with nothing impeding the sound as it crosses that property line. She expressed concern that what is proposed by the noise ordinance could potentially make it even louder.

Randy Munson, on behalf of the Ankeny Area Chamber of Commerce and co-chair of the SummerFest Committee, expressed appreciation to the city for its support of SummerFest 2010. He specifically thanked the Public Works, Parks & Recreation, Fire and Police Departments for their services. He stated the partnership between the city, the schools and the chamber is what makes it possible.

Tony George, of Sudzee's Lazer Wash, 1517 S. Ankeny Blvd., addressed the city council regarding drainage issues along S. Ankeny Blvd. from his car wash property south to SE Shurfine Drive. He stated the problem is the ditch and tubes put in place many years ago are no longer adequate for the amount of water they are taking in today.

He stated the past couple years he has been working with the city to resolve the issue, including installing an on-site retention pond to slow the water in the ditch. However, the businesses south of the retention pond are still having drainage issues in the ditch. Mr. George noted that the storm sewer project to the north of his property included the installation of 48" tubes. The water from these tubes flows into the ditch, but then cannot get through the 30" tubes in front of their property. He stated he keeps the ditch mowed and keeps the area around the tubes clear, but it is still inadequate. He stated the Iowa Department of Transportation (IDOT) is aware that there has been a drainage issue there for quite a while. He stated that with the current IDOT reconstruction project underway, it is the perfect opportunity for something to be done about this, while the traffic along S. Ankeny Blvd is already affected, rather than wait a year or two to fix the problem and tear things up all over again. The current construction project has had a negative impact on his business. He requested the city help with the issue.

City Manager, Carl Metzger, stated Paul Moritz, Director of Public Works, has a meeting scheduled with the IDOT later this month and will see that Mr. George is invited to provide full discussion of the nature of the problem.

B. APPROVAL OF AGENDA

ACTION #1. Kissinger made the motion to approve and accept the August 2, 2010 agenda, without amendment, seconded by Block.

ROLL CALL

2010-0802.01 YES 5 NO 0

C. PUBLIC HEARING(S):

- **PH 2010-26:** Proposed PUD amendment of certain property owned by Family Homes Construction, LLC/HZB Enterprises, LLC

Mayor Van Oort announced this is the time and place for a public hearing on the matter of the proposed Ordinance #1673, amending the zoning regulations, Chapter 192, of the Municipal Code of the City of Ankeny, Iowa, by amending the PUD zoning of certain property owned by Family Homes Construction, LLC/HZB Enterprises, LLC, by reducing the minimum building separation from 14 feet to 10 feet and reducing the rear yard setback along the City of Ankeny park ground from 30 feet to 10 feet, in accordance with a new master plan. **Layman's Description:** Approximately 10.25 acres of undeveloped land located southwest of the intersection of SW Tradition Drive and SW Franklin Drive. Notice of this hearing was published in the Des Moines Register on July 23, 2010, and notices were mailed to affected property owners as required by law.

Eric Jensen, Assistant Director of Planning & Building, reported to council this rezoning is an amendment to the existing Tradition PUD. The area affected by the amendment is southeast of the intersection at SW Oralabor Road and SW State Street, more specifically in Tradition Plat 3. This area was originally platted in 2005 by Regency and contained 44 townhome lots. The new owner, HZB Enterprises, has taken over development. In continuing with the development, they have come across two issues.

The first issue is the building separation required by the Tradition PUD. The units proposed by HZB are larger than what Regency was building. In addition, HZB will only build single family detached structures, no two-unit structures. HZB plans to construct two single family detached structures on lots that Regency had planned for two-unit structures sharing a property line. The second issue with the HZB's larger units is the need for a reduction in the rear yard setback along the west property line. The land to the west is a city park, so there is no concern about encroaching on the setback. At their July 6th meeting, the Plan & Zoning Commission recommended approval of this PUD amendment, and city staff recommend its approval as well.

Councilor Kissinger inquired as to whether there are any storm water issues in this area.

Eric Jensen stated he is not aware of any storm water issues in the area.

Councilor Welch inquired as to the proximity of the proposed new setback to the floodplain.

Eric Jensen stated the topography near the property line is steep, and the floodplain is a considerable distance within the city park property.

Councilor Welch expressed his concern that the 100-year floodplain map being used could be outdated; and he wanted to prevent any potential for flooding issues in the future by ensuring we are not even close to it.

Councilor Strait expressed concern about the potential for the banks eroding over time, which could change the landscape of the floodplain.

Mayor Van Oort stated the ordinance is only being given first consideration at this meeting, so additional information can be gathered and the council concerns can be addressed prior to the second reading.

ACTION #2. There being no written or oral objection, Welch made the motion to close Public Hearing 2010-26, seconded by Strait.

ROLL CALL
2010-0802.02

YES 5 NO 0

Mayor Van Oort stated further consideration and action on this item will take place under "Legislative Business", Agenda Item "I" later in the meeting.

D. REPORTS OF ADVISORY BOARDS AND COMMISSION:

Plan & Zoning Commission Representative, Shelly Lawrence updated the city council on activities of the Plan & Zoning Commission.

Mayor's Youth Council: No Report

E. REPORT OF LOBBYIST: none

F. APPROVAL OF CONSENT AGENDA:

• **Minutes**

- CA-1** Approval of official council actions of the regular meeting of July 19, 2010, as published, subject to correction, as recommended by the City Clerk.
- CA-2** Receive and file minutes of the Plan & Zoning Commission meeting of July 20, 2010, subject to correction, as recommended by the recording secretary.

• **Licenses and Permits:**

- CA-3** Consider motion to approve a Class B Beer Permit w/outdoor service area for Ankeny Jaycees d/b/a Ankeny Jaycees-Unplugged Event for August 6, 2010, 420 West First Street - Ankeny Bandshell. (new)
- CA-4** Consider motion to approve a Class B Beer Permit w/Sunday Sales for Godfather's Pizza, Inc., d/b/a Godfather's Pizza, 802 North Ankeny Blvd. (renewal)
- CA-5** Consider motion to approve a Class C Liquor License for Quality Food Concepts, LLC d/b/a Ranallo's on 3rd, 417 SW 3rd Street. (renewal)
- CA-6** Consider motion to approve a Class C Liquor License & Catering Privilege for Dennis Wieben d/b/a Dennis Wieben, 1220 NW Prairie Ridge Drive. (new – August 14, 2010)

• **Finance/Budget**

- CA-7** Consider motion to approve Payment #4 in the amount of \$6,853.60 to Civil Design Advantage for engineering services on the SW Southlawn Area Utility Replacement Project.
- CA-8** Consider motion to approve Payment #3 in the amount of \$45,693.09 to Construct, Inc., for construction services on the Otter Creek and Renaissance Park Improvements Project – Phase II.
- CA-9** Consider motion to approve Payment #4 in the amount of \$2,176.00 to FOX Engineering Associates, Inc., for engineering services on the NE 54th Street Sanitary Sewer Project.
- CA-10** Consider motion to approve Payment #1 in the amount of \$71,249.91 to Gator Excavating, Inc., for construction services on the 2010 South Ankeny Blvd. Feeder Main Project.

- CA-11** Consider motion to approve Change Order #4 decreasing the contract amount by \$124,258.67 with McAninch Corporation for construction services on the SW Magazine Road & SW Cherry Street Paving Project – Phase 1.
- CA-12** Consider motion to approve Payment #12 in the amount of \$4,000.00 to RDG – SWB for consulting services on the 2003 Comprehensive Plan Update.
- CA-13** Consider motion to approve Payment #3 in the amount of \$11,367.15 to Snyder & Associates, Inc., for engineering services on the Ankeny Traffic Signal System Timings Update Project.
- CA-14** Consider motion to approve Payment #19 in the amount of \$34,572.50 to Snyder & Associates, Inc., for engineering services on the East First Street Interchange Reconstruction Project.
- CA-15** Consider motion to approve Payment #12 in the amount of \$21,086.00 to Snyder & Associates, Inc., for engineering services on the I-35 Widening Project - East First Street Interchange to NE 36th Street.
- CA-16** Consider motion to approve Payment #11 in the amount of \$3,242.50 to Snyder & Associates, Inc., for engineering services on the SE Corporate Woods Drive Railroad Overpass Project.
- CA-17** Consider motion to approve Payment #3 in the amount of \$29,123.50 to Snyder & Associates, Inc., for engineering services on the SE Tributary (B) to Fourmile Creek project.
- CA-18** Consider motion to approve Payment #8 in the amount of \$826.50 to Snyder & Associates, Inc., for engineering services on the SW Goodwin Street Utility Improvements Project.
- CA-19** Consider motion to approve Payment #20 in the amount of \$23,600.50 to Snyder & Associates, Inc., for engineering services on the SW Magazine Road & SW Cherry Street Paving Project.
- CA-20** Consider motion to approve Payment #4 in the amount of \$37,160.95 to Veenstra & Kimm, Inc., for engineering services on the Southeast Area Sewer Improvements Project.
- CA-21** Consider motion to approve Payment #24 in the amount of \$5,800.00 to Water's Edge Aquatic Design, LLC for design services on the Aquatic Center Design Project.

- CA-22** Consider motion to approve the August 2, 2010 Accounts Payable from the following funds: Gen \$250,776.34, Road Use Tax \$52,040.89, Tax Increment Fin. \$67,499.12, Econ Dev \$166.04, Dog Park Trust Fund \$57.31, Water \$83,353.69, Sewer \$18,304.88, Stormwater \$3,279.42, Golf Course \$32,964.30, Enterprise Proj \$171,240.36, Revolving \$7,589.53, Risk Mgmt \$259,072.32, Equipment Reserve \$20,016.00, Cap. Proj. \$399,839.23, Payroll \$827,402.34 Less Service Transfers (\$96.19) Less Agenda Pymnts Approved Separately (\$377,239.05) Grand Total \$1,816,266.53. (C. Block, Chp., G. Welch, W. Steenhoek)

- **Personnel Items:** None

- **Community Development Items**

- CA-23** Consider motion to adopt RESOLUTION 2010-195 approving cost participation for sidewalk oversizing in Avondale Trace Plat 2 and Woodland Reserve Elementary Plat 1.

- CA-24** Consider motion to adopt RESOLUTION 2010-196 providing for the notice and hearing of the City Council of the City of Ankeny, Iowa, to amend the Planned Unit Development zoning for certain property owned by Visions Investment, L.L.C. (date of hrg: 8/16/2010 @ 5:30 p.m.)

- CA-25** Consider motion to adopt RESOLUTION 2010-197 authorizing the Mayor to sign an agreement allowing the placement of "District" banners on street lighting fixtures along a portion of SW State Street between SW Prairie Trail Parkway and SW Magazine Road.

- **Engineering Items:**

- CA-26** Consider motion to adopt RESOLUTION 2010-198 accepting a proposal from HCI Concrete Construction in the amount of \$30,456.00 for the 2010 Hillside Park.

- **Capital Improvement Projects - Final Acceptance**

- CA-27** Consider motion to accept the Certificate of Completion from Snyder & Associates, Inc., for the Otter Creek Park – Parking Lot Improvement Project.

- CA-28** Consider motion to adopt RESOLUTION 2010-199 accepting the Otter Creek Park – Parking Lot Improvement Project with Con-Struct, Inc., in the final contract amount of \$99,865.00.

- CA-29** Consider motion to authorize release of retainage payment in the amount of \$4,993.25 to Con-Struct, Inc. for construction services on the Otter Creek Park – Parking Lot Improvement Project in accordance with the terms of the contract.

• **Administrative Items:**

- CA-30** Consider motion to adopt RESOLUTION 2010-200 designating an Ankeny Unplugged event at the Bandshell as a community celebration in accordance with Section 130.05 and waiving requirements of Section 130.07(1) of the Ankeny City Code for a special use permit. (date of event: September 9, 2010)
- CA-31** Consider motion to adopt RESOLUTION 2010-201 adopting a certain supplement prepared by Iowa Codification, Inc., as an official supplement to the 2008 Municipal Code. (covering ordinances through 1663)
- CA-32** Consider motion to approve the renewal of the City's general insurance policy with Iowa Communities Assurance Pool for policy year July 16, 2010 through July 15, 2011 and authorize the payment of premium in the amount of \$251,758.82.
- CA-33** Consider motion to adopt RESOLUTION 2010-202 authorizing the Mayor's signature for a Resource Enhancement and Protection (REAP) Grant Application by the City of Ankeny, Iowa for the Gay Lea Wilson Trail Extension Project.
- CA-34** Consider motion to adopt RESOLUTION 2010-203 authorizing the certification of liens to the Polk County Treasurer for purposes of assessing delinquent utility account balances against property.
- CA-35** Consider motion to close public trail for the Ankeny Parks & Recreation Department 5K Sunset Run. (August 7, 2010)
- CA-36** Consider motion to receive and file correspondence received from Wendy Ferraro, 601 NW Kimberly Circle, dated July 25, 2010 regarding Noise Measurement Report.
- CA-37** Consider motion to set regular meeting of the Ankeny City Council for Tuesday, September 7, 2010 at 5:00 p.m.

ACTION #3. Steenhoek made the motion to approve the recommendations for Consent Agenda Items CA-1 through CA-37, seconded by Kissinger.

ROLL CALL
2010-0802.03

YES 5 NO 0

G. SUPPLEMENTAL & REMOVED CONSENT AGENDA ITEMS:

ACTION #4. No action taken.

H. RECESS:None

I. LEGISLATIVE BUSINESS:

- Approval of Ordinances:

Ordinance 1659: An ordinance amending the Municipal Code of the City of Ankeny, Iowa, by adding new Chapter 11, Special Events.

ACTION #5. Strait made the motion to accept third consideration of **ORDINANCE 1659**, sending it on its final passage and publication as required by law, seconded by Kissinger.

ROLL CALL

2010-0802.05 YES 5 NO 0

Ordinance 1660: An ordinance amending Chapter 44, Noise Control

Mayor Van Oort requested City Manager, Carl Metzger, address Wendy Ferraro's question about using A-scale, C-scale or Flat-scale for enforcement of the noise ordinance's decibel restrictions.

City Manager, Carl Metzger, stated there will be some administrative procedures that will need to be worked out after the ordinance is passed by council. He stated the noise ordinance references A or C scale, which we will use as guidance for establishing the procedures. He further stated that the key point in establishing the noise ordinance is that this ordinance is not just for Hawkeye Park, it will govern the maximum decibel levels allowed throughout the community.

City Attorney, Amy Beattie, stated the Supreme Court decision provided a balance between the interests of Central Park visitors – both those wanting to use or attend events at the band shell and those who did not – and residents in close proximity of the park. The decision legitimizes what the city is doing by establishing city regulations through the noise ordinance.

Councilor Block inquired as to who will be responsible for working out the administrative details of the noise ordinance.

City Manager, Carl Metzger, stated that will be done through the City Manager's office.

ACTION #6. Welch made the motion to accept third consideration of **ORDINANCE 1660**, sending it on its final passage and publication as required by law, seconded by Steenhoek.

ROLL CALL

2010-0802.06 YES 5 NO 0

Ordinance 1666: An ordinance amending Title 175 Building & Property Regulations of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2009 International Building Code and 2009 International Residential Code with amendments.

ACTION #7. Kissinger made the motion to accept third consideration of **ORDINANCE 1666**, sending it on its final passage and publication as required by law, seconded by Strait.

ROLL CALL
2010-0802.07 **YES 5 NO 0**

Ordinance 1667: An ordinance amending Title 176 Building and Property Regulations, of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2009 International Mechanical Code with amendments

ACTION #8. Steenhoek made the motion to accept third consideration of **ORDINANCE 1667**, sending it on its final passage and publication as required by law, seconded by Welch.

ROLL CALL
2010-0802.08 **YES 5 NO 0**

Ordinance 1668: An ordinance amending Title 177 Building and Property Regulations, of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2009 International Property Maintenance Code with amendments.

ACTION #9. Strait made the motion to accept third consideration of **ORDINANCE 1668**, sending it on its final passage and publication as required by law, seconded by Block.

ROLL CALL
2010-0802.09 **YES 5 NO 0**

Ordinance 1669: An ordinance amending Title 178 Building and Property Regulations, of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2009 Uniform Plumbing Code with amendments

ACTION #10. Welch made the motion to accept third consideration of **ORDINANCE 1669**, sending it on its final passage and publication as required by law, seconded by Kissinger.

ROLL CALL
2010-0802.10 **YES 5 NO 0**

Ordinance 1670: An ordinance amending Title 179 Building and Property Regulations, of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2008 National Electric Code aka NFPA 70.

ACTION #11. Steenhoek made the motion to accept third consideration of **ORDINANCE 1670**, sending it on its final passage and publication as required by law, seconded by Strait.

ROLL CALL
2010-0802.11 **YES 5 NO 0**

Ordinance 1671: An ordinance amending Title 180 Building and Property Regulations, of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2009 International Fire Code with amendments.

ACTION #12. Block made the motion to accept third consideration of **ORDINANCE 1671**, sending it on its final passage and publication as required by law, seconded by Kissinger.

ROLL CALL
2010-0802.12 **YES 5 NO 0**

Ordinance 1672: An ordinance establishing Title 182 Building and Property Regulations, of the Municipal Code of the City of Ankeny, Iowa, by adopting the 2009 International Energy Conservation Code with amendments.

ACTION #13. Welch made the motion to accept third consideration of **ORDINANCE 1672**, sending it on its final passage and publication as required by law, seconded by Steenhoek.

ROLL CALL
2010-0802.13 **YES 5 NO 0**

Ordinance 1673: An ordinance amending the zoning regulations, Chapter 192 of the Municipal Code of the City of Ankeny, Iowa, by amending the PUD Zoning of certain property owned by Family Homes Construction, LLC/HZB Enterprises, LLC. (PH 2010-26)

ACTION #14. Strait made the motion to accept first consideration of **ORDINANCE 1673**, seconded by Kissinger.

ROLL CALL
2010-0802.14 **YES 5 NO 0**

J. OLD BUSINESS: none

K. NEW BUSINESS:

- Proposed The District at Prairie Trail – Phase 1
Initiate proceedings

ACTION #15. Welch made the motion to adopt **RESOLUTION 2010-204** ordering construction of certain public improvements and fixing a date for hearing thereon and taking of bids therefore, seconded by Kissinger. (date of bid-letting: 8/31/10 @ 10:30 a.m. – date of hrg: 9/7/10 @ 5:00 p.m.)

ROLL CALL
2010-0802.15 **YES 5 NO 0**

- Noise Permit Approval for August 14, 2010 from 7:00 p.m. to 12:00 a.m.
Dennis Wieben - Wedding Reception

Judy Wieben, spouse of Dennis Wieben, provided council information related to the wedding reception.

ACTION #16. Welch made the motion to approve the noise permit application, seconded by Strait.

ROLL CALL

2010-0802.16 YES 5 NO 0

- Request for Executive Session

ACTION #17. Kissinger made the motion that Council go into Executive Session, pursuant to the provisions of Iowa Code Chapter 21.5, sub-paragraph (j) "to discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property", seconded by Steenhoek.

ROLL CALL

2010-0802.17 YES 5 NO 0

Council went into executive session at 6:20 p.m.
Council reconvened at 6:33 p.m.

L. ADMINISTRATIVE BUSINESS:

- REPORT OF THE CITY STAFF:

City Manager, Carl Metzger, reported it is good to be back after his vacation and thanked Assistant City Manager, Jim Spradling, for covering the council meeting in his absence.

- REPORT OF THE GOVERNING BODY:

Mayor Van Oort invited the city council to join him at a sendoff ceremony for the 113th Calvary Squadron, being deployed to Afghanistan. The ceremony will be Thursday, August 5 at 10 a.m. at Ankeny High School.

Council Member Welch stated he will be absent for the August 16 city council meeting. He also stated the Metro Waste Authority board will be working on strategic planning over the next several months and asked the council members to give him any comments or suggestions they may have regarding the Metro Waste Authority's activities, such as the recycling program. He also shared with council information regarding discussion he has had with Iowa Citizens for Community Improvement.

Council Member Strait stated he has been called to jury duty next week.

Future Council Agenda Items:

- ***Council Action Planning Session – 1) Local Business Investment Policy; 2) Business Park Development Strategy; 3) NW State Street parking prohibition and draft ordinance – 8/9/10 @ 5:00 p.m.***
- ***Public Hearing – 2010 SW Scott Street Area Water Main Improvements (date of hrg: 8/16/10 @ 5:30 p.m.)***
- ***Public Hearing – PUD Amendment – Vision Investment, LLC - (date of hrg: 8/16/10 @ 5:30 p.m.)***
- ***Council Action Planning Session – Core Business Matrix – 8/23/10 @ 5:00 p.m.***
- ***Council Strategic Planning Retreat – 8/26-27/10***
- ***Council Action Planning Session – Woodland Reserve Greenway Master Plan – 8/30/10 @ 5:00 p.m.***
- ***Public Hearing – Proposed The District at Prairie Trail – Phase 1 - (date of hrg: 9/7/10 @ 5:00 p.m.)***

M. ADJOURNMENT

ACTION #18. There being no further business, Kissinger made the motion to adjourn, seconded by Welch (6:40 p.m.)

ROLL CALL

2010-0802.18 YES 5 NO 0

Pamela DeMouth, City Clerk

Steven D. Van Oort, Mayor

The context of the above meeting will be submitted for council action at their next regular meeting on August 16, 2010.

Published in the Des Moines Register on the 13th day of August, 2010.